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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CS Docket No. 98-54

In the Matter of)

1998 Biennial Regulatory Review - -)

Part 76 - Cable Television Service)
Pleading and Complaint Rules)

To: The Commission

REPLY COMMENTS

BellSouth Corporation and its subsidiaries BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc. (hereinafter referred to collectively as "BellSouth"), hereby submit their reply comments with respect to the Commission's *Notice of Proposed Rulemaking* (FCC 98-68) in the above-captioned proceeding.

I. STATEMENT OF INTEREST.

BellSouth fully supports the Commission's effort to harmonize or streamline its various Part 76 procedural rules to reduce administrative burdens both on the Commission's staff and on multichannel video programming distributors ("MVPDs"). As a provider of alternative multichannel video service in multiple markets, BellSouth is particularly interested in any rule clarifications that would streamline the Commission's Part 76 procedural requirements for effective competition petitions of cable overbuilders. As alluded to by other commenting

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parties in this proceeding, the Commission's current procedures sometimes inadvertently delay a finding of effective competition where there is no real dispute about the matter, without any countervailing benefit to subscribers.^{1/} In that vein, and consistent with the Commission's broader objective of facilitating near-term competition to incumbent cable operators, BellSouth herein recommends a rule clarification which will streamline the processing of effective competition petitions arising from cross-ownership of cable overbuild facilities and wireless cable systems in the same market.

II. DISCUSSION.

As the Commission is aware, BellSouth has made an unprecedented commitment to provide digital wireless cable service in major markets throughout the southeastern United States. In a number of these markets, BellSouth is also obtaining cable franchises and overbuilding the incumbent cable operator, thus enabling BellSouth to offer wireless cable *or* hardwire cable service in the same area.^{2/} Thus, where BellSouth's wireless cable and "overbuild" cable systems overlap and thereby trigger the cable-MDS cross-ownership and

^{1/} See, e.g., Comments of Tele-Communications, Inc., CS Docket No. 98-54, at 11-12 (filed June 22, 1998).

^{2/} BellSouth has completed agreements to acquire MDS and ITFS channel rights in and around several large markets in Florida, and in New Orleans, Atlanta and Louisville. BellSouth launched digital wireless cable service in New Orleans in November, 1997, and in Atlanta in June, 1998. The company is scheduled to launch digital wireless cable service in Jacksonville, Orlando/Daytona, Miami and Louisville over the next two years. BellSouth has also launched competitive wired cable service in several communities, and has obtained cable franchises in 18 communities in Alabama, Florida, Georgia, South Carolina and Tennessee, representing potentially 1.2 million cable households.

cross-affiliation rules, BellSouth has been instructed to obtain a ruling from the Commission before initiating cable service stating that the cable overbuild is subject to effective competition.^{3/} Most recently, for example, BellSouth filed effective competition petitions in connection with its proposed operation of wireless cable and cable overbuild service in St. Johns County and Dade County, Florida.^{4/} Significantly, in each case the Mass Media Bureau required BellSouth to file its petition *before* its cable overbuild had signed up a single subscriber.^{5/}

Under Section 623(l)(1)(A) of the Cable Consumer Protection and Competition Act of 1992 (47 U.S.C. § 543(l)(1)(A)), a cable system is deemed to be subject to effective competition if it serves fewer than 30% of the households in its franchise area. Clearly, then, a cable overbuild that starts out with no subscribers as a new entrant is subject to effective competition under this test, regardless of the number of households in its franchise area.

^{3/} See 47 U.S.C. § 533(a)(3); 47 C.F.R. §§ 21.912(b), 21.913(e)(3). Also, to demonstrate compliance with the cable-ITFS cross-affiliation rule, BellSouth must demonstrate that it is not the only cable operator in the franchise area. 47 C.F.R. § 74.931(h).

^{4/} See Petition for Special Relief filed by BellSouth Wireless Cable, Inc. and BellSouth Interactive Media Services, Inc., CSR-5243-E (April 15, 1998) [the "St. Johns Petition"]; Letter from Gali L. Hagel, Esq. and Thomas J. Dougherty, Esq. to Mr. Roy J. Stewart re: CSR-5242-E, Showing of Compliance with Rules 21.912 and 74.931(h) by BellSouth Corporation, *et al.* in Unincorporated Dade County, Florida (April 10, 1998) [the "Dade County Letter"].

^{5/} See, e.g., Letter from Roy J. Stewart, Chief, Mass Media Bureau, to Sharon E. Hilliard and Thompson T. Rawls, II re: MDS Station WNEK346, 1800E1-LG, at 2 (July 8, 1997) ["[I]t will be BellSouth's responsibility as a Commission licensee to make any timely, appropriate waiver requests and/or effective competition showings *before any construction progresses to the point at which its unbuilt cable interests become cable systems.*"] [emphasis added].

Nonetheless, the Commission's staff requires BellSouth to gather and submit an extensive amount of data as to the number of "occupied" households in its franchise areas, as if BellSouth were an *incumbent* cable operator that already has subscribers.^{6/} Such information is obviously unnecessary to demonstrate BellSouth's compliance with the 30% test since "zero" is less than 30% under any and all circumstances. Moreover, since the staff has already mandated that BellSouth file its effective competition petitions before commencing cable overbuild service, the staff in effect is requiring BellSouth to go through the exercise of compiling household data when the staff already knows that BellSouth's cable overbuilds satisfy the 30% effective competition test. BellSouth submits that there is no sensible administrative or public interest rationale for this policy. In fact, the policy *harms* the public interest to the extent that it represents a wasteful use of the Commission's limited staff resources and delays resolution of BellSouth's effective competition petitions, and potentially delays the launch of competitive wireless and wired cable service in local markets.

III. REQUESTED RELIEF

Accordingly, BellSouth requests that the Commission eliminate this problem simply by clarifying that where an entity seeks to operate overlapping wireless cable and cable overbuild systems under the effective competition/"second operator" exceptions to the cable-MDS and cable-ITFS cross-ownership and cross-affiliation rules, the cable overbuild system will be entitled to an automatic presumption that it complies with those rules, and the cable

^{6/} See, e.g., Dade County Letter at 4-5.

overbuilder therefore will not be required to file an effective competition petition with the Commission. Alternatively, should the Commission still deem it necessary to require a cable overbuilder to make such a filing prior to initiating cable overbuild service, the Commission should clarify that the overbuilder only needs to submit a letter identifying its franchise area and certifying that an incumbent cable operator is already providing service in that area, *without* a showing as to the number of "occupied" households in the franchise area. Upon submission of this letter, the overbuilder should automatically be deemed subject to effective competition for purposes of the cable-MDS cross-ownership and cross-affiliation rule, and should automatically be deemed to qualify as a "second cable operator" for purposes of the cable-ITFS cross-affiliation rule. A formal Commission ruling on the matter would not be required.

BellSouth submits that adoption of either of the above-described rule clarifications will eliminate the need for the staff to review unnecessary information, and thus will reduce administrative costs and processing time significantly without compromising the integrity of the Commission's effective competition procedures. Furthermore, neither of the requested clarifications would have any bearing whatsoever on the Commission's presumption that cable systems are not subject to effective competition: that presumption was adopted in connection with the Commission's imposition of rate regulation on incumbent cable operators in noncompetitive markets, and thus is clearly rebutted in the case of a cable overbuilder that competes directly with the incumbent and enters the market with no subscribers. Finally, the

requested rule clarifications will avoid inefficient use of staff resources and minimize delays in the launch of competitive multichannel video service in local markets, which, BellSouth submits, should be an overriding public policy objective of this proceeding.

WHEREFORE, BellSouth Corporation, BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc. request that the Commission clarify its Part 76 procedural rules as requested above.

Respectfully submitted,

**BELLSOUTH CORPORATION
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July 7, 1998

CERTIFICATE OF SERVICE

I, Brooke Wilding, hereby certify that on this 7th day of July, 1998, copies of the foregoing "Reply Comments" in CS Docket No. 98-54 were served by hand on the following:

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